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Attorney for Angelito Trinidad, Ronnie Palomo, Herman Tejada, Esperanza David, and
Antonio Alovera, Respondents

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

JOHN S. PANGELINAN,

Plaintiff,

vs.

**DAVID A. WISEMAN, et
al,**

Defendants.

**ANGELITO TRINIDAD,
RONNIE PALOMO,
HERMAN TEJADA,
ESPERANZA DAVID,
ANTONIO ALOVERA,
and the UNITED STATES
OF AMERICA,**

Respondents.

Case No. CV 08-0004

**OPPOSITION OF
ANGELITO TRINIDAD,
RONNIE PALOMO,
HERMAN TEJADA,
ESPERANZA DAVID,
AND ANTONIO
ALOVERA TO *EX PARTE*
MOTION TO STRIKE
REPLIES**

Date: May 7, 2008
Time: 9 am
Judge: Tydingco-Gatewood

John Pangelinan moves to strike the Reply of "Respondents"

Angelito Trinidad, Ronnie Palermo, Herman Tejada, Esperanza

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1 David and Antonio Alovera (the "Trinidad Plaintiffs") to his Objection
2 to their Motion to Dismiss ex parte, on grounds that the Reply was
3 filed and served one day too late. Pangelinan claims that because he
4 filed his Opposition on February 26, 2008, the Reply should have
5 been filed and served no later than the Thursday following: or by
6 March 6, 2007. The Trinidad Plaintiffs' Reply pointed out that the
7 court lacked subject matter jurisdiction to entertain Pangelinan's
8 declaratory judgment claim and that Pangelinan had failed to oppose
9 the Trinidad Plaintiffs' request for a pre-filing injunction.
10

11 To the extent that the Reply was untimely filed, the Trinidad
12 Plaintiffs respectfully request the court to excuse the one day delay
13 because it was short-lived, Pangelinan has not shown any prejudice,
14 and there is no allegation that the Trinidad Plaintiffs acted in bad
15 faith. *See Spencer v. Wal-Mart Stores, Inc.*, 203 Fed.Appx. 193 (10th
16 Cir. 2006). Whether to excuse a late filing is within the court's
17 discretion. *See Burnham v. Humphrey Hospitality Reit Trust, Inc.*,
18 403 F.3d 709, 712 (10th Cir.2005); see also Local Rule 7.1 (d)
19 ("Failure to file briefs or memoranda within the time deadlines
20 prescribed above *may* subject a party to a motion for summary
21 disposition). Absent an allegation by the opposing party that it
22
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1 suffered prejudice because of the delay or some showing that the
2 untimely filing has disrupted the judicial process, moreover, the court
3 generally allows such filings. *See, e.g., id.* (holding that party could
4 file brief approximately two months late).

5
6 Given the short delay and absence of prejudice, the Trinidad
7 Plaintiffs request that the court deny the motion to strike the reply
8 brief and that the court accept the Reply for submission.

9
10 Respectfully submitted this 6th day of May, 2008.

11
12 /s/ Robert T. Torres
13 ROBERT T. TORRES, ESQ.
14 Attorney for Respondents
15 Trinidad, Palomo, Tejada, David and Alovera
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